

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document was signed electronically on November 29, 2006, which may be different from its entry on the record.

IT IS SO ORDERED.



A handwritten signature in blue ink, appearing to read "Arthur I. Harris".

Arthur I. Harris
United States Bankruptcy Judge

Dated: November 29, 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 05-22369
)	
WANDA L. DAWSON,)	Chapter 13
Debtor.)	
)	
WANDA L. DAWSON,)	Adversary Proceeding No. 05-1463
Plaintiff,)	
)	Judge Arthur I. Harris
v.)	
)	
J & B DETAIL, L.L.C., <i>et al.</i> ,)	
Defendants.)	

MEMORANDUM OF OPINION

In a Memorandum of Opinion dated July 28, 2006 (Docket #38), the Court found that the plaintiff, Wanda L. Dawson, was entitled to \$500 in damages from the defendants, plus costs and attorneys' fees, under former subsection 362(h) of the Bankruptcy Code. The Court gave Dawson's counsel until August 11, 2006, to file an affidavit or declaration under penalty of perjury detailing any costs and attorneys' fees resulting from defendants' willful violation of the automatic stay.

Defendants' counsel then had until August 25, 2006, to file any brief in opposition. For the reasons that follow, the Court will enter a final judgment with respect to Dawson's claim under former subsection 362(h) in the amount of \$6,466.45.

BACKGROUND

The Court incorporates by reference its Memorandum of Opinion dated July 28, 2006 (Docket #38), in which the Court found that Dawson was entitled to \$500 in damages from the defendants, plus costs and attorneys' fees, as a result of defendants' willful violation of the automatic stay. That Memorandum of Opinion also included proposed findings of fact and conclusions of law recommending that the district court enter judgment in favor of the defendants on Dawson's remaining claims, which do not arise under the Bankruptcy Code and which go beyond a bankruptcy judge's authority to enter final judgment, absent the parties' consent under 11 U.S.C. § 157. Pursuant to Bankruptcy Rule 9033, Dawson's non-bankruptcy claims are currently before the district court for entry of a final judgment. *See* District Court Case No. 1:06CV01949.

In compliance with the Court's Memorandum of Opinion dated July 28, 2006, Dawson's counsel filed a fee application (Docket #42) seeking \$6,642.69 in fees plus \$800.70 in expenses, for a total of \$7,443.39 beyond the \$500 in damages previously awarded. On August 25, 2006, defendants' counsel filed a brief in

opposition (Docket #44). Although counsel acknowledged the defendants' willingness to abide by the prior award of \$500, defendants objected to the award of any attorneys' fees or expenses. In addition, defendants took exception to certain charges, should the Court be inclined to award at least some attorneys' fees. On Sept. 7, 2006, Dawson's counsel filed a reply brief (Docket #46). The Court has reviewed the application, brief in opposition, and reply brief and is ready to rule.

DISCUSSION

Dawson seeks attorneys' fees for work performed by her attorney, Joseph Romano, and a paralegal as follows:

Attorney Romano 16.4 hours @ \$175 per hour for \$2,870.00

Paralegal 42.9 hours @ \$88 per hour for \$3,775.20.

Dawson also seeks \$800.70 in expenses as follows:

postage \$2.49

Dec 29, 2005 deposition attendance fee \$47.28

Jan. 6, 2006 Paytosh court reporter \$90.75
(Exhibit B to fee app.); appears to be
included in \$477.75 invoice

Jan. 6, 2006 Paytosh court reporter \$477.75
including transcript
(Exhibit C to fee app.)

Jan. 27, 2006 Simone court reporter \$60.50
(Exhibit D to fee app.)

April 24, 2006 Service of subpoena \$121.93
(Exhibit E to fee app.)

In calculating the reasonable fees to be awarded under former subsection 362(h) this Court uses the lodestar method. *See In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991) (adopting lodestar method of fee calculation for bankruptcy cases); *accord In re Pawlowicz*, 337 B.R. 640, 647 (Bankr. N.D. Ohio 2005) (following lodestar method in awarding attorneys' fees under former subsection 362(h)).

The Court first rejects the defendants' argument that attorneys' fees should be denied or reduced because Dawson's attorney was in a position to minimize the damages caused by defendants' violation of the automatic stay. Without repeating all of the analysis contained in the July 28, 2006, Memorandum of Opinion, the Court rejects the defendants' renewed argument that inaction by Dawson's counsel should result in a denial of attorneys' fees.

[T]he duty to avoid an ongoing violation of the automatic stay rests with the creditor. Dawson's counsel effectively communicated to the defendants the existence of the Dawson's bankruptcy case with his telefax late on the afternoon of Wednesday, August 17, 2005. By the morning of Thursday, August 18, 2005, defendants were on notice of Dawson's bankruptcy. Therefore, as of August 18, 2005, they had an affirmative duty to stop the ongoing violation of the automatic stay created by the on-time system's postpetition beeping and blinking and imminent threat of disabling the

ignition of Dawson's Mustang. Moreover, nothing prevented defendants from immediately communicating a payment or emergency code to Dawson or her attorney. Finally, defendants' own threatening comments in response to Dawson's premature claim that she had filed for bankruptcy eliminated what might have otherwise been a reasonable option for correcting the violation of the automatic stay, *i.e.*, suggesting that Dawson bring in the Mustang to have the on-time system removed.

Memorandum of Opinion (July 28, 2006) at 26-27. Nor was the situation in this case like the hypothetical scenario described by Judge Kinneary in *In re Price*, 175 B.R. 219, 222 (S.D. Ohio 1994), where a contempt motion to stop a willful violation of the automatic stay "was unnecessary and wasteful without a prefiling notification to the creditor." In the present case, the defendants did receive notification, in the form of a telefax from debtor's counsel sent immediately after the bankruptcy case was filed. Nevertheless, the defendants refused to give Dawson a payment code or emergency code after receiving notice that Dawson had filed her bankruptcy case.

The Court will next address the hourly rates and services performed. Although the fee application asserts an hourly rate of \$175 per hour for Dawson's counsel, the hourly rate for additional services actually negotiated between Dawson and her attorney in this case is \$125. *See Rights and Responsibilities of Chapter 13 Debtors and their Attorneys (Main Case Docket #3)* at 5. Therefore, the Court will use the \$125 per hour rate negotiated between Dawson and her

counsel for work in this case. In addition, the Court finds the rate of \$88 per hour to be reasonable for Dawson's paralegal.

In terms of services performed, the Court finds it appropriate to deduct for time spent researching and drafting Dawson's non-bankruptcy causes of action, for which the undersigned judge has recommended that the district court enter judgment in favor of the defendants. Although the district court has not entered final judgment on the non-bankruptcy claims, Dawson has not sought timely review of the proposed findings of fact and conclusions of law under Bankruptcy Rule 9033. "[W]here the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 440 (1983). Here, the plaintiff did prevail on her 362(h) claim, but only in the amount of \$500, and she did not prevail on her non-bankruptcy claims. Accordingly, the Court will award only that amount of fees that is reasonable in relation to these results.

Unfortunately, the itemized fee statement (Exhibit A, Docket #42) does not distinguish between hours spent on the stay violation and the non-bankruptcy claims, so the Court must estimate. First, the Court notes that little or no time was spent at trial on the non-bankruptcy claims. Second, it appears that all of the pre-trial work such as taking depositions and witness preparation were reasonable

and necessary to prove the 362(h) claim. Thus, only the complaint and the trial brief deal substantially with the non-bankruptcy claims. A total of 3.3 hours of attorney time was spent on the complaint. A total of 1.4 hours of paralegal time was spent on the complaint, and a total of 3.9 hours of paralegal time was spent on the trial brief. About one-third of the complaint and about one-third of the trial brief are devoted to the non-bankruptcy claims. Therefore, the Court will reduce its award by 1.1 hours of attorney time and 1.8 hours of paralegal time for work spent on non-bankruptcy causes of action. The Court will also reduce the award by 3.1 hours of paralegal time for work spent preparing an untimely response to defendants' motion for summary judgment.

The Court rejects defendants' other arguments, including the argument that work spent drafting an affidavit for witness Richard Paytosh was unreasonable. Paytosh was a central figure in the events at issue in this proceeding, and the Court finds nothing unreasonable in counsel's efforts to attempt to pin down testimony from this reluctant witness.

Finally, with respect to expenses, it appears that an invoice for \$90.75 relates to the same services contained in a later invoice for \$477.75. *Compare* Exhibit B of Docket #42 *with* Exhibit C of Docket #42. The Court will therefore exclude the \$90.75 invoice and award expenses in the amount of \$709.95.

Accordingly, the Court awards attorneys' fees and expenses as follows:

Romano 15.3 hours @ \$125 per hour for	\$1,912.50
Paralegal 38.0 hours @ \$88 per hour for	+ <u>\$3,344.00</u>
Total attorneys' fees	\$5,256.50
Expenses	+ <u>\$709.95</u>
Subtotal attorneys' fees and expenses	\$5,966.45
Damages previously determined	+ <u>\$500.00</u>
Total judgment	\$6,466.45

CONCLUSION

For the foregoing reasons, the Court enters judgment in favor of the plaintiff, Wanda L. Dawson, and against the defendants, J & B Detail, L.L.C. and Judy Simone, jointly and severally in the amount of \$6,466.45, pursuant to former subsection 362(h) of the Bankruptcy Code. Pursuant to Bankruptcy Rule 7054(a) and Fed. R. Civ. P. 54, the Court finds that there is no just reason for delay in entering final judgment on this claim under former subsection 362(h), while Dawson's non-bankruptcy claims await a final ruling from the district court under Bankruptcy Rule 9033. *See* District Court Case No. 1:06CV1949.

IT IS SO ORDERED.